**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/09160/2015

**THE IMMIGRATION ACTS**

**Heard at Newport (Columbus House)**
**On 16 June 2017**

**Decision & Reasons Promulgated**
**On 22 June 2017**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**D S**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Howard instructed by Fountain Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**1.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

## Introduction

**2.** The appellant is a citizen of Albania who was born on [ ] 1992. She arrived in the United Kingdom in January 2014. She was pregnant and her daughter was subsequently born on [ ] 2014.

**3.** On 6 March 2014, the appellant claimed asylum. She claimed to fear persecution on return to Albania as a victim of sex trafficking and also of domestic violence.

**4.** On 4 February 2014, a referral was made to the National Referral Mechanism in order for the Competent Authority to make a decision whether the appellant fell within the Trafficking Convention. Subsequently, the Competent Authority concluded that the appellant did not fall within the Trafficking Convention.

**5.** As regards the appellant's asylum claim, following a screening and substantive interview, on 30 April 2015 the Secretary of State refused the appellant's claims for asylum and humanitarian protection and on human rights grounds.

## The Appeal

**6.** The appellant appealed to the First-tier Tribunal. In a determination dated 7 November 2016, the First-tier Tribunal (Judge Fowell) dismissed the appellant's appeal on all grounds. The judge found the appellant's account not to be credible that she had been trafficked and there was no real risk of domestic violence from her father if she returned. In addition, the judge found that there was a sufficiency of protection available to the appellant and that it would not be unduly harsh for her to relocate on return to Albania and live in Tirana.

**7.** The appellant sought permission to appeal to the Upper Tribunal challenging the judge's adverse finding in respect of her international protection claim and to dismiss her appeal under Art 8.

**8.** On 13 December 2016 the First-tier Tribunal (Judge E B Grant) granted the appellant permission to appeal.

**9.** On 4 January 2017, the Secretary of State filed a rule 24 notice seeking to uphold the First-tier Tribunal's decision.

## Discussion

**10.** Mr Howard, who represented the appellant, relied upon the five grounds of appeal. I will deal with each ground in turn.

**11.** Ground 1 contends that the judge applied the wrong standard of proof when in para 44 he said this:

> "A further point which strikes me as significant, even though not relied on particularly in the refusal letter, was the appellant not knowing even which

> city in France she was living for a month. This simply does not seem at all probable." (my emphasis)

**12.** Mr Howard did not, rightly, place any great reliance upon this ground. It is self-evident and plain on any reading of the judge's decision that he applied the "lower standard of proof", namely whether the appellant had established a "real risk" of persecution or ill-treatment on return to Albania. At para 39, the judge explicitly set out that standard of proof. The standard of proof is also set out at paras 5-7 of the determination in relation to the international protection claims and the claim under Art 8. The judge's reference to it not being "at all probable" that the appellant would not even know the city in France in which she lived for over a month, is no more than a 'turn of phrase' and not a misstatement of the standard of proof. There is, in my judgment, no merit in ground 1.

**13.** Mr Howard took grounds 2 and 3 together on the basis that they both contend that the judge reached contradictory findings. Mr Howard pointed out that in para 49 the judge had found the appellant's account not to be credible. However, he submitted that the judge had inconsistently accepted the appellant's account concerning certain matters at para 50 where the judge said this:

> "I see no reason to doubt her account of her home area or her upbringing and level of schooling, or that her father used to be in the Police. It does not follow however that he would be in a position now to influence the authorities or that he would find it easier to trace her as a result."

**14.** The difficulty with Mr Howard's submission is that the judge was there taking aspects of the appellant's case "at its highest" which then, even on that basis, did not lead the judge to find that the appellant had established her claim looking at all the circumstances. Had the judge simply chosen to approach the appellant's case on the basis that no part of her account could be accepted, she could not have succeeded. She was in no better position when he accepted certain aspects of her account and, nevertheless, concluded her claim failed. In doing so, the judge did not fall into error.

**15.** Further, Mr Howard relied on the fact that the judge had in para 49 stated that:

> "But the appellant arrived in the UK pregnant, has been here for the best part of three years, and (I accept) came alone. Given the country guidance it is clear that this would make her situation very difficult at home. It is perfectly understandable, and in accordance with the country guidance, that as a pregnant single woman she would meet with strong disapproval from her own family, let alone others, and that this may have been the spur to coming to the UK. Support may or may not have been available to fund the trip from other family members. It is important not to speculate too far, but it seems likely that there was at least as much a push to her departure, given the position of single mothers in Albania, as there was a pull from the prospects of a better life in the UK."

**16.** Mr Howard submitted that if she returned her circumstances would "meet with strong approval from her own family", it was inconsistent for him to then find in para 53 that she could "return safely to her home area and to her family."

**17.** In my judgment, this reads far too much into the judge's observation in para 49 about her reception by her family on return. In particular, it fails to take into account the judge's adverse credibility finding and his further consideration of the risk to her on return of domestic violence from her father as set out in para 51 of his determination as follows:

> "Her claim to be at risk of domestic violence from her father relies entirely on her own account. Although she claimed to have been beaten by him, her mother intervened and she was able to leave the family home the next day without further difficulty. I note too that although the accounts given in the supporting statements from Ms. Sainsbury and Ms. Brown state that she was subject to a very strict upbringing and was beaten regularly, this was not a real feature of the appellant's own statements. She describes in her first statement a traditional Muslim family, with her mother wearing the veil and an expectation that her family would find her a husband, but she does not claim that she was beaten. In paragraph 10 she stated that she was terrified of her father's reaction to the pregnancy because he was always tough on her for the simplest of things, and to illustrate this recounted a time when she was 15 and her father threw a mobile phone at her when he found that she had got a tattoo. It hit her on the lip, causing a scar and he said that he was going to kill her, but she came to no further harm. This single incident, in response to a show of independence in getting a tattoo, illustrates in fact a less harmful environment altogether and so her account, even if accepted on these aspects, does not evidence a real risk of death or serious harm at the hands of her father. Accordingly all claims based on the risk of domestic violence must be dismissed."

**18.** There is, in my judgment, no inconsistency between the judge's view expressed in para 49 and his conclusion in para 51 and repeated in para 53 that the appellant could return safely to her home area.

**19.** Mr Howard also placed reliance on para 4 of the Grounds which he characterised as a 'reasons challenge' which he accepted placed a high threshold to make good this ground. Mr Howard, relying upon ground 4, contended that the judge had accepted that the appellant would face a social stigma as a result of having an illegitimate daughter, she would be met with strong disapproval from her family members, her father had been in the police and she was a vulnerable person. In the light of that, the judge had failed to give adequate reason for reaching his adverse conclusion in respect of the risk to her on return.

**20.** I have already set out the judge's reasoning that she would not be at real risk of persecution as a result of domestic violence set out in para 51. His reasoning that she would not be at risk of being trafficked or re-trafficked is set out in para 52 of the judge's decision and was not challenged before me.

**21.** In dismissing the appeal, the judge also found that the authorities in Albania would be willing and able to provide her with a sufficiency of

protection even if a real risk of domestic violence was established, namely by seeking the protection of the police and NGO shelter accommodation following the country guidance decision of TD and AD (trafficked women) CG [2016] UKUT 0092 (IAC). The appellant's grounds do not challenge this finding which is fatal to her international protection claim.

**22.** In addition, at paras 56-63, the judge considered in detail whether it would be reasonable and not unduly harsh to expect the appellant to relocate to Tirana and resort to an NGO shelter. At para 58, the judge took into account that the appellant is young and would face a social stigma of having an illegitimate daughter. He also took into account her mental health at para 60. At paras 61-62, the judge found that the appellant could reasonably be expected to live in shelter accommodation and, although that might be only temporary, at para 62 concluded as follows:

> "… it would be possible for a single woman to live on her own in Tirana, and that jobs are advertised in Albanian newspapers, even for young unskilled women. The position for the longer term ought therefore to be manageable and this supports my view that return would not be unduly harsh."

**23.** I am satisfied that the judge gave adequate reasons sufficient to understand why he reached his decision adverse to the appellant. He was required to do no more. It was, in my judgment, plainly open to the judge on the evidence before him to reach those findings and to dismiss the appellant's appeal.

**24.** For these reasons, I reject grounds 1, 2, 3 and 4.

**25.** That, then, leaves ground 5. That ground, simply put, is that the judge in dismissing the appellant's appeal under Art 8 failed to make any finding in respect of whether she met the requirement in para 276ADE(1)(vi), namely that there "would be very significant obstacles to the applicant's integration into the country to which [she] would have to go if required to leave the UK".

**26.** Mr Howard pointed out that at paras 64-75 the judge had only considered Art 8 outside the Rules. That was a material error of law.

**27.** It is clear from the skeleton argument relied upon by the appellant's legal representative before Judge Fowell that reliance was placed upon para 276ADE(1)(vi) of the Rules. It is well established that an appellant can succeed under the so-called 'Art 8 Rules' without consideration of a broader range of issues under Art 8. If the individual cannot succeed under the Rules, then only if there are "compelling circumstances" such that "unjustifiably harsh consequences" will result will the public interest be outweighed (see R (Agyarko and another) v SSHD [2017] UKSC 11 at [48]). It is unfortunate that the judge did not expressly deal with para 276ADE but rather moved directly to consider whether the appellant could succeed under Art 8 on the basis that her removal would be disproportionate. In my judgment, however, the judge's failure to consider

para 276ADE(1)(vi) was not material to his decision to dismiss the appeal under Art 8.

**28.** It is clear that the judge took fully into account all the circumstances of the appellant and her child. At paras 69-71, he dealt with the 'best interests' of the appellant's daughter. He was satisfied that, even having regard to the medical evidence that the child might potentially suffer from epilepsy, her best interests did not require, and only provided "modest support" to, her remaining in the UK given that she had no independent life from her mother as a 2 year old child. Further, although the judge does not make a repeated reference to all the appellant's circumstances, he clearly had in mind all those matters which he had previously set out in considering what if any risk she faced on return to Albania and whether she could internally relocate. It is quite impossible to conclude that if he had addressed the issue of whether there were "very significant obstacles" to the appellant's integration into Albania, given his findings, in particular in relation to internal relocation and her daughter's best interests, he could have reached any conclusion other than that the requirements of para 276ADE(1)(vi) were not met. Whilst the issue of whether relocation is "unduly harsh" is not necessarily precisely the same as the test under para 276ADE(1)(vi), I am unable to see how, on the evidence before him, the judge's findings could have been different in respect of those two issues.

**29.** As I have already said, the judge fully considered all the circumstances of the appellant and her daughter in applying the 5-stage test in Razgar [2004] UKHL 27. He fully took into account the public interest factors set out in s.117B of the Nationality, Immigration and Asylum Act at paras 74-75. At para 75 he concluded, having referred to the importance of speaking English, financial independence and that little weight should be given to private life while a person is in the UK unlawfully or their status is precarious, as follows:

> "These last three points count heavily against the appellant, and even a consideration of the best interest of [the appellant's daughter] does not bring her close to showing that removal would have such an effect on her private or family life as to amount to a breach of her human rights. She has been in the UK a relatively short time, awaiting the outcome of this process, and the links she has made during that time cannot form the basis of a claim to remain further."

**30.** For these reasons, I also reject ground 5 on the basis that there was no material error of law in the judge reaching his decision to dismiss the appellant's appeal under Art 8.

## Decision

**31.** For these reasons, the First-tier Tribunal did not materially err in law in dismissing the appellant's appeal on all grounds. The First-tier Tribunal's decision stands.

**32.** Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

A Grubb
Judge of the Upper Tribunal

Date: 21 June 2017

**TO THE RESPONDENT**
**FEE AWARD**

As the appeal stands dismissed, no fee award can be made.

Signed

A Grubb
Judge of the Upper Tribunal

Date: 21 June 2017